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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.902 OF 2004

Vithoba Ramji Pansare ... Appellant
versus
Sitaram Hari Bhor and others ... Respondents

Mr.Milind Sathaye for appellant.
Mr.K.S.Pandey for respondent 1B.

CORAM : DR.D.Y.CHANDRACHUD, J.

DATE : 06TH JULY 2007

PC :

1. Admit. The Second Appeal raises following substantial questions of law :-

(i) Whether the Courts below were justified in dismissing the appellant's suit for declaration and injunction on an incomplete finding of title since, ex facie, the judgment of the First Appellate Court discloses a consideration of only one of the two sources from which the appellant claims to have acquired title?

(ii) Was the First Appellate Court correct in disregarding the registered sale deeds executed

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in favour of the appellant (Exhibits 54 and 55 dated 24th January 1968 and 13th April 1971) on the basis of Exhibit-103 which is stated to be an entry in the Revenue Records?

2. The facts lie in a narrow compass. The appellant who is the original plaintiff claims a six Anna share in Gat No.332 and Four Anna shares respectively in Gat Nos.333 and 334 situated at Mauje Thangaon in Taluka Sinnar in District Nashik. The appellant claims title to the aforesaid lands on the basis of registered sale deeds which were produced and marked in evidence as Exhibits-54 and 55. The first sale deed dated 24th January 1968 was executed in favour of the appellant by Rangnath Hari in respect of Gat Nos.333 and 334 while the second sale deed dated 13th April 1971 was executed in favour of the appellant by Kisan Namdev in respect of Gat No.332. The appellant instituted a suit before the Civil Judge, Junior Division, Sinnar on 15th October 1976 for a declaration and injunction, the cause of action being that the appellant had obtained knowledge of the fact that first respondent had agreed to sell Gat Nos.332, 333 and 334 which included the suit property to the second respondent. The suit was dismissed by the

learned Trial Judge. The Appellate Court confirmed the dismissal by the impugned judgment and order.

3. At the hearing of the Second Appeal it has been urged on behalf of the appellant that the entire judgment of the First Appellate Court is cryptic and is confined to two paragraphs which would ex facie reveal a failure to consider the material aspects of the evidence, more particularly the source on the basis of which the appellant claims title. Now, a perusal of paragraph 7 of the impugned judgment would reveal that the Appellate Court has held that a perusal of the Entry at Exhibit-103 would show that Rangnath Hari had sold his share from Survey No.19/4/1 on 2nd July 1964 to Bhika Savliram. In the circumstances it was held that the registered sale deed executed in favour of the appellant on 24th January 1968 by Rangnath Hari would not confer title since the vendor had already been divested of his title on 2nd July 1964. There is more than one reason why the approach of the Appellate Court is unsustainable. Firstly, a perusal of the reasoning would show that though there was a registered sale deed in favour of the appellant the Appellate Court has relied upon a

revenue entry showing that the vendor of the appellant had already divested himself of title. The revenue entries, it is well settled, are not conclusive proof of title. That apart and secondly, it is evident that the Appellate Court has failed to discuss the source of the title which the appellant claims through Exhibit-55 which was the sale deed executed by Kisan Namdev on 13th April 1971. Though there is a brief reference thereto, the Appellate Court has completely lost sight of the fact that the appellant had an independent claim to a part of the suit property on the sale deed at Exhibit-55.

4. The Second Appeal would, therefore, warrant interference by this Court since the Appellate Court has failed to consider the material aspects of evidence and has proceeded to discard the reliance placed by the appellant on the the registered sale deeds merely on the basis of the revenue record. The entire approach of the Appellate Court is flawed and is misconceived. Therefore, consistent with the limitations of the jurisdiction of this Court in a Second Appeal, it is necessary for the Court to remand the matter back to the Appellate Court in order to ensure that there is no miscarriage of justice.

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5. In the circumstances, the appeal is allowed and the judgment of the Appellate Court dated 1st April 1999 in Civil Appeal No.29 of 1991 is quashed and set aside and Civil Appeal No.29 of 1991 shall stand restored to the file of District Judge, Nashik for fresh disposal after parties are heard. It is, however, clarified that the observations contained in this judgment shall not preclude the Appellate Court from arriving at its own findings on the merits of the rival cases on the basis of documentary and oral evidence on the record. The appeal shall stand allowed and is disposed of in the aforesaid terms. There shall be no order as to costs.

6. In view of disposal of Second Appeal, Civil Application No.1099 of 2000 does not survive and is accordingly disposed of.

(DR.D.Y.CHANDRACHUD, J.)